

§ 33.5 [Reserved]**§ 33.6 Number of copies.**

An original and five copies, plus one copy for each State affected, of applications under this part shall be submitted.

§ 33.7 Verification.

The original application shall be signed by a person or persons having authority with respect thereto and having knowledge of the matters therein set forth, and shall be verified under oath.

§ 33.8 Reports.

Upon the granting of any application under this part by the Commission, applicants shall report to the Commission under oath within 10 days after any sale, lease, or other disposition of facilities, merger or consolidation of facilities, or purchase or acquisition of securities of a public utility, the fact of such sale, lease, or other disposition of facilities, merger or consolidation of facilities, or purchase or acquisition of securities, and the terms and conditions thereof.

§ 33.9 Public notice.

The Commission may require the applicant to give such local notice by publication as the Commission in its discretion may deem proper.

§ 33.10 Commission action.

Application under this part will ordinarily require 45 days after the date of filing before final action can be taken thereon by the Commission, to allow for such preliminary study, investigation, public notice, opportunity for hearing, and consideration by the Commission, as may be appropriate in the premises.

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

Sec.

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AUTHORITY: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

SOURCE: Order 182, 46 FR 50514, Oct. 14, 1981, unless otherwise noted.

CROSS REFERENCES: For rules of practice and procedure, see part 385 of this chapter. For Approved Forms, Federal Power Act, see part 131 of this chapter.

OMB REFERENCE: "FERC Filing No. 523" is the identification number used by the Commission and the Office of Management and Budget to reference the filing requirements in part 34.

§ 34.1 Applicability; definitions; exemptions in case of certain State regulation, certain short-term issuances and certain qualifying facilities.

(a) *Applicability.* This part applies to applications for authorization from the Commission to issue securities or assume an obligation or liability which are filed by:

(1) Licensees and other entities pursuant to sections 19 and 20 of the Federal Power Act (41 Stat. 1073, 16 U.S.C. 812, 813) and part 20 of the Commission's regulations; and

(2) Public utilities pursuant to section 204 of the Federal Power Act (49 Stat. 850, 16 U.S.C. 824c).

(b) *Definitions.* For the purpose of this part:

(1) The term *utility* means a licensee, public utility or other entity seeking authorization under sections 19, 20 or 204 of the Federal Power Act;

(2) The term *securities* includes any note, stock, treasury stock, bond, or debenture or other evidence of interest in or indebtedness of a utility;

(3) The term *issuance or placement of securities* means issuance or placement of securities, or assumption of obligation or liability; and

(4) The term *State* means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(c) *Exemptions.* (1) If an agency of the State in which the utility is organized and operating approves or authorizes, in writing, the issuance of securities prior to their issuance, the utility is exempt from the provisions of sections 19, 20 and 204 of the Federal Power Act and the regulations under this part, with respect to such securities.

(2) This part does not apply to the issue or renewal of, or assumption of liability on, a note or draft maturing one year or less after the date of such issue, renewal, or assumption of liability, if the aggregate of such note or draft and all other then-outstanding notes and drafts of a maturity of one year or less on which the utility is primarily or secondarily liable, is not more than 5 percent of the par value of the other then-outstanding securities of the utility as of the date of issue or renewal of, or assumption of liability on, the note or draft. In the case of securities having no par value, the par value for the purpose of this part is the fair market value, as of the date of issue or renewal of, or assumption of liability on, the note or draft.

(3) *For certain qualifying facilities.* Any cogeneration or small power production facility which is exempt from sections 19, 20 and 204 of the Federal Power Act pursuant to §292.601 of this chapter shall be exempt from the provisions of this part.

[Order 182, 46 FR 50514, Oct. 14, 1981, as amended at 48 FR 9851, Mar. 9, 1983; Order 575, 60 FR 4852, Jan. 25, 1995]

§34.2 Placement of securities.

(a) *Method of issuance.* Upon obtaining authorization from the Commission, utilities may issue securities by either a competitive bid or negotiated placement, provided that:

(1) Competitive bids are obtained from at least two prospective dealers, purchasers or underwriters; or

(2) Negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters; and

(3) The utility:

(i) Accepts the bid or offer that provides the utility with the lowest cost of money for securities with fixed or variable interest or dividend rates, or

(ii) Accepts the bid or offer that provides the utility with the greatest net

proceeds for securities with no specified interest or dividend rates, or

(iii) The utility has filed for and obtained authorization from the Commission to accept bids or offers other than those specified in paragraphs (a)(3)(i) or (a)(3)(ii) of this section.

(b) *Exemptions.* The provisions of paragraph (a) of this section do not apply where:

(1) The securities are to be issued to existing holders of securities on a pro rata basis;

(2) The utility receives an unsolicited offer to purchase the securities;

(3) The securities have a maturity of one year or less; or

(4) The securities are to be issued in support of or to guarantee securities issued by governmental or quasi-governmental bodies for the benefit of the utility.

(c) *Prohibitions.* No securities will be placed with any person who:

(1) Has performed any service or accepted any fee or compensation with respect to the proposed issuance of securities prior to submission of bids or entry into negotiations for placement of such securities; or

(2) Would be in violation of section 305(a) of the Federal Power Act with respect to the issuance.

[Order 575, 60 FR 4853, Jan. 25, 1995]

§34.3 Contents of application for issuance of securities.

Each application to the Commission for authority to issue securities shall contain the information specified in this section. In lieu of filing the information required in paragraphs (e), (i) and (j) of this section, a specific reference may be made to the portion of the registration statement filed under §34.4(f), which includes the information required in these paragraphs.

(a) The official name of the applicant and address of its principal business office.

(b) The State in which the utility is incorporated, the date of incorporation, and each State in which it operates.

(c) The name, address and telephone number of a person within the utility authorized to receive notices and communications with respect to the application.

(d) The date by which Commission action is requested.

(e) A full description of the securities proposed to be issued, including:

- (1) Type and nature of securities;
- (2) Amount of securities (par or stated value and number of units);
- (3) Interest or dividend rate, if any;
- (4) Dates of issuance and maturity;
- (5) Institutional rating of the securities—or if the securities are not rated, an explanation as to why they are not rated, and if the securities will be rated, an estimate of the rating; and
- (6) Any stock exchange on which the securities will be listed.

(f) The purpose for which the securities for which application is made are to be issued:

(1) If the purpose of such issuance is the construction, completion, extension, or improvement of facilities, describe in reasonable detail the construction program for which the funds were or are to be used.

(2) If the purpose for such issuance is for the refunding of obligations, describe in detail the obligations to be refunded, including the character, principal amounts, applicable discount or premium, dates of issuance and maturity, and all other material facts concerning such obligations.

(3) If the purpose for such issuance is for other than construction or refunding, explain such other purpose(s) in detail.

(g) A statement as to whether or not any application with respect to the transaction or any part thereof is required to be filed with any State regulatory body.

(h) A detailed statement of the facts relied upon by the applicant to show that the issuance:

(1) Is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, is necessary or appropriate for or consistent with the proper performances by the applicant of service as a public utility and will not impair its ability to perform that service, and

(2) Is reasonably necessary or appropriate for such purposes.

(i) A detailed statement of the bond indenture(s) or other limitations on interest and dividend coverage, and the effects of such limitations on the issuance of additional debt or equity securities.

ance of additional debt or equity securities.

(j) A brief summary of any rate changes which were made effective during the period for which financial statements are submitted or which became or will become effective after the period for which statements are submitted.

(k) A form of notice suitable for publication in the FEDERAL REGISTER, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," setting forth:

- (1) The legal name of the applicant;
- (2) The securities offered for issuance including the proposed issue date; and
- (3) The comment procedure.

(l) Any applicable exhibits as required under § 34.4.

[Order 182, 46 FR 50514, Oct. 14, 1981, as amended by Order 390, 49 FR 32505, Aug. 14, 1984; Order 575, 60 FR 4853, Jan. 25, 1995; Order 593, 62 FR 1283, Jan. 9, 1997]

§ 34.4 Required exhibits.

(a) *Exhibit A.* The applicant must file the statement of corporate purposes from its articles of incorporation.

(b) *Exhibit B.* A copy of all resolutions of the applicant's directors authorizing the issuance of securities for which the application is made; and copies of the resolution of the stockholders approving such issuance if approval of the stockholders has been obtained.

(c) *Exhibit C.* The Balance Sheet and attached notes for the most recent 12-month period for which financial statements have been published, provided that the 12-month period ended no more than 4 months prior to the date of the filing of the application, on both an actual basis and a pro forma basis in the form prescribed for the "Comparative Balance Sheet" of FERC Form No. 1, "Annual Report for major electric utilities, licensees and others." Each adjustment made in determining the pro forma basis must be clearly identified.

(d) *Exhibit D.* The Income Statement and attached notes for the most recent 12-month period for which financial

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statements have been published, provided that the 12-month period ended no more than 4 months prior to the date of the filing of the application, on both an actual basis and a pro forma basis in the form prescribed for the "Statement of Income for the Year" of FERC Form No. 1, "Annual Report for major electric utilities, licensees and others." Each adjustment made in determining the pro forma basis must be clearly identified.

(e) *Exhibit E.* A Statement of Cash Flows and Computation of Interest Coverage on an actual basis and a pro forma basis for the most recent 12-month period for which financial statements have been published, provided that the 12-month period ended no more than 4 months prior to the date of the filing of the application. The Statement of Cash Flows must be in the form prescribed for the "Statement of Cash Flows" of the FERC Form No. 1, Annual Report for major electric utilities, licensees and others," followed by a computation of interest coverage, in the form of the following worksheet:

Federal Energy Regulatory Commission worksheet for computation of interest coverage	Actual for the year ended mm-dd-yy	OMB control No. 1902-0043, pro forma for the year ended mm-dd-yy
Net income		
Add: Interest on Long-Term Debt, Interest on Short-Term Debt, Other Interest Expense, Total Interest Expense		
Federal and State Income Taxes		
Income Before Interest and Income Taxes		
Computation of Interest Coverage		
Income Before Interest and Income Taxes ÷ Total Interest Expense = Interest Coverage		

(f) *Exhibit F.* A copy of registration statement and exhibits which are filed with the Securities and Exchange Commission for the proposed security issuance.

[Order 182, 46 FR 50514, Oct. 14, 1981, as amended by Order 390, 49 FR 32505, Aug. 14, 1984; Order 575, 60 FR 4853, Jan. 25, 1995; 60 FR 27882, May 26, 1995]

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§ 34.5 Additional information.

The Commission may, in its discretion, require the filing of additional information which appears necessary to reach a determination on any particular application.

§ 34.6 Form and style.

Each application pursuant to this part 34 shall conform to the requirements of subpart T of part 385 of this chapter.

[Order 182, 46 FR 50514, Oct. 14, 1981, as amended by Order 225, 47 FR 19056, May 3, 1982]

§ 34.7 Number of copies to be filed.

Each applicant shall submit to this Commission an original and four copies of each application pursuant to this part 34.

§ 34.8 Verification.

The original application shall be signed by an authorized representative of the applicant, who has knowledge of the matters set forth therein, and it shall be verified under oath.

§ 34.9 Filing fee.

Each application shall be accompanied by a fee as prescribed in part 381 of this chapter.

[Order 182, 46 FR 50514, Oct. 14, 1981, by Order 435, amended at 50 FR 40357, Oct. 3, 1985]

§ 34.10 Reports.

The applicant must file reports under § 131.43 and § 131.50 of this chapter no later than 30 days after the sale or placement of long-term debt or equity securities or the entry into guarantees or assumptions of liabilities pursuant to authority granted under this part.

[Order 575, 60 FR 4853, Jan. 25, 1995]

PART 35—FILING OF RATE SCHEDULES

Subpart A—Application

Sec.

35.0 Filing fees.

35.1 Application; obligation to file rate schedules.

35.2 Definitions.

35.3 Notice requirements.